UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,605	10/08/2004	David Johnston Lynch	PU020102	3925

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Joseph S Tripoli
Thomson Multimedia Licensing Inc
PO Box 5312
Princeton, NJ 08543-5312

EXAMINER
ALAM, MUSHFIKH I

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
	10/510,605	LYNCH, DAVID JOHNSTON
Office Action Summary	Examiner	Art Unit
	MUSHFIKH ALAM	2426

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _06 April 2009_.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _3-9 and 12-21_ is/are pending in the application.
  4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) _3-9 and 12-21_ is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _08 October 2004_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  a) ☐ All b) ☐ Some * c) ☐ None of:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. _____.
    3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
  Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
  Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____ .

DETAILED ACTION

1.   Claims 3-9, 12-21 are pending.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

3.   Claims 3-5, 8, 12-14, 17 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Plotnick et al. (US 2003/0227567) in view of Rosenberg et al. (US

2002/0100041), and further in view of Mabon (US 7061549), and further in view of

Iggulden (US 6002443).

Claim 3-5, Plotnick teaches an apparatus for displaying at least two modes

(application modes) comprising an interactive application mode (internet access mode)

and a television program mode (VOD mode) on a display device (paragraph [0016]), the

apparatus comprising:

- a television program signal receiver (16) (fig. 1);

- an interactive application signal receiver (32) (fig. 1);

- means for switching (obtaining focus) between said television program mode and said interactive

  application mode being active (focused) in said display device (paragraph [0027]);

Plotnick also teaches the feature of "switching said interactive application mode to television mode, upon receipt of said mute signal (hot key) (paragraph [0027])".

Plotnick is silent regarding the apparatus comprising:

- means to receive remote control signals from a remote control device having a mute key for generating a mute signal;

- means to enable a mute-to-interactive application feature; and

- wherein when said mute-to-interactive application feature is enabled and said television program mode is active in said display device, upon receipt of said mute signal, said mode switching means is activated causing said interactive application mode to be active in said display device.

- wherein when said mute-to-interactive application feature is enabled (user indicating he wants to view pause ads).

-

Regarding the limitations:

- means to switch channels when said television program mode is active in said display device;
- means to store a last viewed item as a go-back channel in a memory source; and
- said remote control device having a go-back channel key for generating a go-back channel signal;
- wherein when said television program mode is active and said last viewed item is said interactive application mode, upon receipt of said go-back channel signal, said mode switching means is activated causing said interactive application mode to be active in said display device;
- wherein when said interactive application mode is active and said last viewed item is a first channel of said television program mode, upon receipt of said go-back channel signal, said mode switching means is activated causing said television program mode to be active and said first channel to be displayed in said display device.
- wherein when in television program mode and said last viewed item is a first channel, upon receipt of said go-back channel signal, said channel switching means is activated causing said first channel to be displayed in said display device.

Plotnick is silent regarding the specific use of a "mute" key being the hot key to enable switching functions.

Plotnick is also silent regarding the feature of "switching between modes upon the receipt of a hot key command, wherein the hot key is a go-back key".

Rosenberg teaches the apparatus comprising:

- means (130) to receive remote control signals from a remote control device having a mute key (i.e. pause key mutes sound) for generating a mute signal (paragraphs [0036], [0039]);

- means (i.e. indicating that he would like to see pause ads) to enable a mute-to-interactive application feature (paragraphs [0039], [0050]); and

- wherein when said mute-to-interactive application feature is enabled (i.e. user enabling pause ads) said television program mode (user watching video programming) is active in said display device, upon receipt of said mute signal (pause), said mode switching means is activated causing said interactive application mode (pause ads) to be active in said display device (paragraph [0050]).

- wherein when said mute-to-interactive application feature is enabled (user indicating he wants to view pause ads).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a switching modes during a mute command as taught by Rosenberg to the application switching system of Plotnick to allow for additional programming during an inactive period (i.e. pause/mute) (paragraph [0050]).

Regarding the above limitations, Plotnick, Rosenberg teach switching between modes upon the receipt of a hot key command. (paragraph [0027] of Plotnick, (paragraphs [0039], [0050] of Rosenberg).

Mabon teaches a go-back key (previous channel of interest key) (col. 7, lines 31-60).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided switching modes (of Plotnick) upon a go-back key (of Mabon) in place of the hot key (of Plotnick) for the added benefit of going back and forth between modes (col. 7, lines 31-60).

Iggulden teaches the specific use of a "mute" key being the hot key to enable switching functions (col. 25, lines 5-22).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided switching modes (of Plotnick) upon a mute key (of Iggulden) for the added benefit of providing another function for use while the program has been triggered by a hot key (i.e. muted) (col. 25, lines 5-22).

Claim 8, Plotnick teaches the apparatus wherein said interactive application mode is a browser mode (i.e. internet access capable programs) (paragraph [0016]).

Claims 12-14 are analyzed as an apparatus of claim 3-5.

Claim 17 is analyzed as an apparatus of claim 8.

4.   Claims 6-7, 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plotnick et al. (US 2003/0227567) in view of Rosenberg et al. (US 2002/0100041), and further in view of Mabon (US 7061549), and further in view of Iggulden (US 6002443), and further in view of Miller et al. (US 2002/0194595), and further in view of (US Zigmond (US 6698020).

Claim 6, Plotnick, Rosenberg together teach a system that switches applications upon the receipt of a mute (pause command mutes sound) command as shown in claim 3.

Plotnick, Rosenberg are silent regarding the apparatus further comprising:

- means to enable a commercial skip feature in response to a commercial skip signal;

- said remote control device having a commercial skip key for generating a commercial skip signal;

- upon detecting a beginning of a commercial break, said mode switching means is activated causing said interactive application mode to be active until either detection of an end of a commercial break or upon elapse of a selected period of time.

Miller teaches the apparatus further comprising:

- means to enable (user-enabled commands are remote control commands) a commercial skip feature in response to a commercial skip signal (paragraphs [0060]);

- said remote control device having a commercial skip key for generating a commercial skip signal (paragraph [0005]);

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a commercial skip key as taught by Miller to the system of Plotnick, Rosenberg to allow users to automatically skip over commericals (paragraph [0005]).

Zigmond teaches the apparatus further comprising:

- upon detecting a beginning of a commercial break (commercial trigger), said mode switching means is activated causing said interactive application mode (of Plotnick) to be active until either detection of an end of a commercial break or upon elapse of a selected period of time (col. 8, lines 29-54).

Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have provided detecting of commercials breaks and

switching as taught by Zigmond to the system of switching applications of Plotnick,

Rosenberg, Miller to allow users to avoid watching commercials (paragraph [0005] of

Miller).

Claim 7, Miller teaches the apparatus of claim 6 wherein said commercial skip

feature is enabled (user-enabled commands are remote control commands) (paragraph

[0060]).

Zigmond teaches said apparatus is adapted to detect said beginning and said

end of said commercial break (based on triggers) col. 8, lines 29-54).

Claim 15 is analyzed as an apparatus of claim 6.

Claim 16 is analyzed as an apparatus of claim 7.

5.   Claims 9, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Plotnick et al. (US 2003/0227567) in view of Rosenberg et al. (US 2002/0100041), and

further in view of Mabon (US 7061549), and further in view of Iggulden (US 6002443),

and further in view of Augenbraun et al. (US 2005/0149981), and further in view of

Schlack (US 2002/0056107).

Claim 9, note the discussion of claim 3 above. Plotnick, Rosenberg are silent regarding the apparatus further comprising:

- means to enable a television during download function;

- wherein when said browser mode is active and said television during download function is enabled, upon a download above a threshold time being detected, said mode switching means is activated causing said television program mode to be active until detection of completion of said download.

Augenbraun teaches the apparatus further comprising:

- means to enable a television during download function (paragraph [0016]);

- wherein when said browser mode is active and said television during download function is enabled, said mode switching means is activated causing said television program mode to be active until detection of completion of said download (paragraph [0011]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided switching upon downloads as taught by Augenbraun to the system of Plotnick, Rosenberg to minimize the amount of time the user cannot watch their program (paragraph [0011]).

Schlack teaches a threshold time being detected (paragraph [0015]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a threshold before activating a switch as taught by Schlack to the system of Plotnick, Rosenberg, Augenbraun to purposefully activate a switch in programming (paragraph [0015]).

Claim 18 is analyzed as an apparatus of claim 9.

6.   Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Plotnick et al. (US 2003/0227567) in view of Rosenberg et al. (US 2002/0100041), and

further in view of Mabon (US 7061549), and further in view of Iggulden (US 6002443),

and further in view of Plotnick et al. (US 2002/0144262).

        Claim 19, note the discussion of claims 3-5, Plotnick '567, Rosenberg, Mabon,

Iggulden are silent regarding an apparatus for displaying at least two modes comprising

an interactive application mode and a television program mode on a display device, the

apparatus comprising:

        wherein said remote control signals include a television-during-download signal

generated by the remote control device; when said display device is in the interactive

application mode, a download is initiated, and the download has not been completed.

        Plotnick is also silent regarding the specific feature of "switching modes until a

download moves toward completion".

        Plotnick '262 teaches wherein said remote control signals include a television-

during-download signal (i.e. pause is interpreted as download signal, due to recording

upon pause, trick-play) generated by the remote control device; when said display

device is in the interactive application mode (of Plotnick '567), a download is initiated

(pause of Plotnick '262), and the download has not been completed (paragraph [0128]).

        Augergraun teaches the specific feature of "switching modes until a download

moves toward completion" (paragraph [0011]).

Claim 20 is analyzed as an apparatus of claim 8.

Claim 21 is analyzed as an apparatus of claim 9.

Response to Arguments

7.   Applicant's arguments with respect to claims 3-9, 12-21 have been considered but are moot in view of the new ground(s) of rejection.

Claim 2, Applicant argues that Rosenberg does not teach, show, or even remotely suggest the existence or use of a mute key, mute signal, or a mute-to-interactive application feature as defined in claim 2, Even the present Office Action lacks any citation to an express teaching by Rosenberg about the use of a mute key, mute signal, or a mute-to-interactive application feature. Instead, the present Office Action assumes that, since the pause button causes an interruption of" the replay and because the pause action stops the sound from playing as well as the action, the pause is functionally equivalent to a mute action.

In response to Applicant's argument, reading the claims in the broadest sense, the mute signal is a function that allows for switching. The previous Office Action that it is obvious to one of ordinary skill in the art for the mute signal triggering an action to be replaced with any other hot key function enabling a trigger function. The Iggulden reference has been provided to teach the television signal being muted and another function running while the mute signal is active. Together with switching of functions

during a hot key request (of Plotnick and Rosenberg), provides a sound basis for the

combination for the hot key in place of the mute signal.

   Claim 3, Applicant argues that there is no suggestion in Mabon or the other

references that a jump back (or go-back) input from the user in one application will

cause the present application to be switched to a previous application last viewed by

the. user. Applications and channels are not suggestive of each other. Mabon only

shows a single application in use. Mabon stores channels, not applications, as the list

viewed items.

   In response to Applicant' argument, Mabon is relied upon for teaching the

concept of a go back signal and memory related to previous channels. Plotnick and

Rosenberg are relied upon for teaching the switching of channels and applications. In

combination, through use of a trigger signal (i.e. mute, go back key, hot key, etc.), a

switching function is performed in through Plotnick, Rosenberg and the memory related

to a go back key is taught by Mabon. Plotnick discloses the ability to maintain a listing

of previously focused applications (para 31). Thus, the combination allows for the

combination of the go back channel key associated with channel for use with

applications through the use of this maintained listing.

   Claim 19, Applicant argues that none of the applied references herein even hint

at the operation or mode switching while a download is in progress.

The Examiner respectfully disagrees. Clearly disclosed in para 11 of Augenbraun is the function of tuning away from a channel while a download is in progress, then tuning back when it has been completed.

Claims 6-7, 15-16, Applicant argues there is no mode switching suggested in either reference when the advertising is substituted into the broadcast feed.

In response to Applicant's argument, Plotnick is relied upon for teaching the aspects of switching modes. Rosenburg, Miller, Zigmond are relied upon for teaching aspects related to commercial skipping as recited in the Office Action above.

Conclusion

8.   Claims 3-9, 12-21 are rejected.

9.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Inquiries

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to MUSHFIKH ALAM whose telephone number is

(571)270-1710. The examiner can normally be reached on Mon-Fri: 8:30-18:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Hirl Joseph can be reached on (571) 272-7304. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mushfikh Alam/
Examiner, Art Unit 2426
7/21/2009

/Joseph P. Hirl/
Supervisory Patent Examiner, Art Unit 2426
July 27, 2009